

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD AYERS

Plaintiff,
v.

J.S. WALTON,

Defendant,

CASE NO. 10-13991
Hon. Lawrence P. Zatkoff

**OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, a federal prisoner proceeding *pro se*, filed an application for the writ of habeas corpus, alleging that Defendant denied his Fourteenth Amendment Procedural Due Process rights in denying him the right to early release pursuant to Petitioner's participation in the Residential Drug Abuse Program ("RDAP"). This matter is currently before the Court on Magistrate Judge Paul J. Komives' Report and Recommendation (Docket #21), wherein the Magistrate Judge recommends that Petitioner's application for the writ of habeas corpus be denied. Petitioner timely filed objections to the Report and Recommendation.

After a thorough review of the court file (including the parties' motions and briefs), the Report and Recommendation, and Petitioner's objections to the Report and Recommendation, this Court will adopt the Report and Recommendation and enter it as the findings and conclusions of this Court. The Court will, however, briefly address Plaintiff's objections.

Petitioner argues that the Magistrate Judge: (1) misinterpreted Petitioner's petition in that Petitioner had alleged that Defendant failed to afford Petitioner adequate notice and the opportunity to present evidence on his behalf prior to taking back the "earned" early release, and (2) failed to address Petitioner's argument that Defendant abused its discretion when Defendant took away his "earned" early release after determining that Petitioner had violated the policies and regulations of the Bureau of Prisons.

The Court first notes that Petitioner had not "earned" early release; rather, he was

“provisionally eligible” for a sentence reduction upon his successful completion of the RDAP. Petitioner did not, however, successfully complete the RDAP. Second, as set forth in the Report and Recommendation, there is no liberty interest in the discretionary release of a prisoner, *Greenholz v. Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1, 7 (1979), and the Bureau of Prisons has the discretion to expel a prisoner from the RDAP if the prisoner is not sincerely completing the requirements of the RDAP. *See* 18 U.S.C. § 3621. Finally, the Magistrate Judge specifically addressed the issue of whether Defendant abused its discretion when the Magistrate Judge found that the Bureau of Prison officials’ decision to expel Petitioner was entitled to deference due to his repeated misconduct offenses, a decision that “is not subject to judicial review.” *See* Report and Recommendation, at 6.

Therefore, for the reasons stated above, the Court hereby ORDERS that Petitioner’s application for the writ of habeas corpus is DENIED and this cause of action is DISMISSED WITH PREJUDICE. Judgment shall be entered accordingly.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: May 11, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on May 11, 2011.

S/Marie E. Verlinde
Case Manager
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